**HIGH COURT OF CHHATTISGARH: BILASPUR**

**CORAM:** HON'BLE SHRI S.R. NAYAK, CJ &
HON'BLE SHRI V.K. SHRIVASTAVA, J.

**WRIT PETITION NO. 2173 OF 2004**

PETITIONER — B.P. Dubey, aged about 60 (at present 70) years, son of R.D. Dubey, Compulsory Retired Assorting Assistant, RMS, RPDN, Bilaspur, resident of – Sirgitti, Bilaspur (CG).

**Versus**

RESPONDENTS

1. Union of India, through: Ministry of Communication, Department of Postal, New Delhi.
2. Director, Postal Services, Raipur, Regional (Department of Postal, PMG) Raipur.(CG).
3. Assistant Post Master (General S.R. & W.L.) Department of Post, M.P. Circle, Bhopal.

**PRESENT:** Shri K.R. Nair, learned counsel for the petitioner.
Shri S.K. Beriwal, learned Standing Counsel for Union of India/respondents.

**ORAL ORDER**

**(Passed on 29th November, 2006)**

The following oral order of the Court was passed by **Vijay Kumar Shrivastava, J.**

This writ petition arises out of the disciplinary action taken against the petitioner herein by the Postal Department. The allegation, in brief, leveled against the petitioner is that, at the relevant point of time, he was working as Head Sorting Assistant at Jagdalpur. Charge sheet was issued to him on 28-05-1990 containing four charges. The crux of the charge was that the petitioner clandestinely and unauthorisedly opened Ins. Parcel number 725 dated 21-06-1989 and removed six saris and those saris

were shared by the petitioner and his colleagues in the section and thereby committed misconduct within the meaning of Rule 3 (1) (i), 3 (1) (ii) and 3 (1) (iii) of the CCS (Conduct) Rules, 1964. The department not being satisfied with the explanation offered by the petitioner-delinquent, proceeded to conduct a regular departmental enquiry. The Enquiry Officer having held the enquiry found the petitioner guilty of the charges leveled against him. The petitioner-delinquent in his reply to the second show cause notice contended before the Disciplinary Authority that the adverse findings recorded by the Enquiry Officer against him are in violation of the principles of natural justice and without giving him proper opportunity to defend. The Disciplinary Authority finding merit in that complaint of the delinquent remanded the proceedings to the Enquiry Officer vide order dated 28-08-1992 with a direction to conduct further enquiry from the stage of the examination of prosecution documents as well as additional documents.

2) As directed by the Disciplinary Authority, Enquiry Officer conducted the enquiry and submitted his report finding the petitioner guilty of the misconduct alleged against him. On the basis of that report, the Disciplinary Authority having regard to the gravity of misconduct committed by the petitioner imposed the penalty of compulsory retirement as a disciplinary measure vide order dated 04-06-1998. Feeling aggrieved by the order of the Disciplinary Authority, petitioner preferred an appeal within the Department and that appeal was also dismissed by the Appellate Authority vide order dated 12-10-1998. Feeling aggrieved by the order of the Disciplinary Authority and that of the Appellate Authority, the petitioner instituted Original Application No. 872 of 1998 before the Central Administrative Tribunal, Jabalpur Bench, Jabalpur (for short "the Tribunal").

3) The case of the petitioner before the Tribunal as referred to by the Tribunal itself, in para three is thus :

> "3. The case of the applicant is that the respondents including the enquiry officer have violated the principles of natural justice in as much as the applicant was not provided the assistance of defence assistant and copies of the documents sought for, were not provided to him. The applicant further urged that the staff who had received the sarees have not been questioned with regard to possession of stolen article from their possession nor they have been prosecuted for their misconduct. There was an inordinate delay in finalising the enquiry. He has further urged that there was no opportunity to cross-examine the prosecution witnesses and also there was no opportunity to examine the defence witnesses and the documents were not supplied to him. Hence the entire proceedings are vitiated which violates the principles of natural justice and the entire proceedings are liable to be quashed."

4) Opposing the Original Application, the Disciplinary Authority – Department, filed their reply squarely denying all the allegations. Furthermore, the Department contended that after remanded the proceedings by the Disciplinary Authority vide order dated 28-08-1992, the petitioner was given adequate and sufficient opportunity to defend himself, but, he for the reasons best known to him did not attend the enquiry on 23-02-1994, 18-03-1994 and 27-06-1994. In the premise of the above pleadings of the parties in their respective cases, the Tribunal heard the arguments. The arguments advanced on behalf of the petitioner – delinquent are set out in para 7 of the impugned order whereas the arguments advanced on behalf of the Department are set out in para 8 of the impugned order which read as below:

> "7- The learned counsel of the applicant has argued, that the order of the disciplinary authority is not a speaking order. He has not considered the enquiry report in detail and passed the order of punishment of compulsory retirement from service with immediate effect.

The learned counsel further submitted that the appellate authority has also not given an opportunity of personal hearing, while confirming the order of punishment of compulsory retirement imposed by the disciplinary authority. He submitted that the orders passed by the Disciplinary Authority and the Appellate Authority are illegal which amounts to violation of principles of natural justice.

8- The learned counsel for the respondents argued on the basis of the reply and also on the basis of the documents. The learned counsel contended that though sufficient opportunities were afforded to the applicant, to cross-examine the prosecution witnesses but he did not choose to cross-examine the witnesses and he failed to examine his defence witnesses. Now at this stage he cannot be permitted to say that, no opportunity was given to him. It is further submitted that the respondents including the enquiry officer have followed the procedure laid down in the rules and also the principle of natural justice. There is no error or illegality in the proceedings of enquiry, and while passing the impugned order and conformity the penalty. Accordingly this application deserves to be dismissed."

5) It needs to be noticed at this stage itself that the petitioner counsel did not contend before the Tribunal that no opportunity was given to the petitioner by the Enquiry Officer after remand of the proceedings by the Disciplinary Authority on 28-08-1992. In that view of the matter, there was no reason for the Tribunal to go into the question whether a direction issued by the Disciplinary Authority to the Enquiry Officer vide its order dated 28-08-1992 was to give an opportunity to the petitioner from the stage of the examination of prosecution documents as well as additional documents.

6) The Tribunal having considered the contention raised on behalf of the delinquent and finding no merit in any of those contentions dismissed the Original Application No.872 of 1998 by the impugned order. Hence, this writ petition.

7) We have heard learned counsel for the parties and perused the impugned order passed by the Tribunal and other material papers appended to the writ petition.

8) It was contended before us by the learned counsel for the petitioner that the impugned order could not be sustained for violation of the principles of natural justice and fair play action and also for violation of the direction issued by the Disciplinary Authority vide order dated 28/08/1992. The contention is misconceived and cannot be countenanced. What law requires is that before an adverse action is taken against the delinquent official, he should be given fair hearing and opportunity of defending himself against the proposed action. Undeniably after remanded all the proceedings by the Disciplinary Authority on 28/08/1992, the petitioner was served with notice and was called upon to participate in the enquiry proceedings, but, the petitioner-delinquent for the reasons best known to him consistently refused to participate in the enquiry proceedings as stated by the Department, which is noted in para 4 of the impugned order. The assertion of the department that despite notice, the petitioner failed to attend the enquiry proceedings on 23/02/1994, 18/03/1994 and 27/06/1994, is not at all denied by the petitioner either in the writ petition or by his counsel in the course of arguments. Opportunity was given to the petitioner-delinquent to defend himself and he failed to avail such opportunity, it should not lie in his mouth at this stage, to contest that the Disciplinary Authority passed an adverse order against him in violation of the principles of natural justice.

9) No other arguments were advanced before us by the learned counsel touching any other aspects of the procedure followed by the Enquiry Officer or the Disciplinary Authority. Misconduct committed by the petitioner touches to the moral turpitude of the petitioner and strictly

speaking in view of the settled law, he would ought to have been removed from services. Be that as it may, the Disciplinary Authority - Department showing compassion has imposed only the penalty of compulsory retirement. Looking from that angle also there is no reason for us to step in under Article 226.

10) In the result and for the foregoing discussion, the writ petition is devoid of merit and it is accordingly dismissed. No costs.

Sd/-
Chief Justice

Sd/-
V.K.Shrivastava
Judge

Raju